

BS97040 CON

U.S. Application No. 10/073,451 Examiner Yao, Art Unit 2667  
Response to 2<sup>nd</sup> Restriction Requirement

### PROVISIONAL ELECTION

The Office alleges that this patent application contains two (2) distinct inventions. As 37 C.F.R. § 1.143 requires, the Assignee provisionally elects the Group I claims of 21-31 and 41-46.

### REPLY AND TRAVERSAL

The Assignee respectfully requests reconsideration and withdrawal of this restriction requirement. The Assignee traverses this restriction requirement by relying upon the following reasons.

#### 1. No Showing of Burden

A proper *prima facie* case for restriction requires i) the alleged inventions must be independent or distinct and ii) there must be a "serious burden" on the Examiner. See U.S. DEPT. OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 803 (8<sup>th</sup> Ed. 2001). The Office may make a *prima facie* case for restriction, using "appropriate explanation," of i) separate classification, ii) a separate status in the art, or iii) a different field of search. *Id.* See also *id.* at § 808.02.

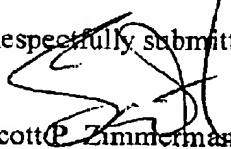
The Office makes no attempt at a *prima facie* case. While the Office lists different classifications for each claim grouping, the classifications differ only in subclass. Examiners routinely search different subclasses when issuing office actions, so the difference in subclasses cannot support restriction. Because the claims do not require a different field of search, nor have separate statuses in the art, no burden is present. Both groupings require the same search of the same classification, no burden is present. No burden is present, so the restriction requirement is improper and must be withdrawn.

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If the Office has any questions, the Office is invited to contact the undersigned at (919) 387-6907 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

  
Scott P. Zimmerman, Reg. No. 41,390  
Attorney for Assignee